



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0158; FRL-10541-02-R4]

Air Plan Approval; Tennessee;

Eastman Chemical Company Nitrogen Oxides SIP Call Alternative Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is conditionally approving a revision to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), through a letter dated August 11, 2021. This revision establishes alternative monitoring, recordkeeping, and reporting requirements under the Nitrogen Oxides (NO_x) SIP Call. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2022-0158. All documents in the docket are listed on the [regulations.gov](https://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia

30303-8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven Scofield, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9034. Mr. Scofield can also be reached via electronic mail at scofield.steve@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Eastman Chemical Company (Eastman) petitioned TDEC to adopt revised permit conditions applicable to its Kingsport, Tennessee facility with an alternative monitoring option for this large non-EGU, along with corresponding revised recordkeeping and reporting conditions. This petition resulted in the issuance of the permit for Eastman included as part of TDEC's SIP submittal. The changes allow Eastman to address the NOx SIP Call's requirements for enforceable limits on ozone season NOx mass emissions through alternative monitoring and reporting methodologies. The August 11, 2021, source-specific SIP revision submitted by TDEC contains the permit provisions that TDEC modified to specifically address the alternative monitoring provisions allowed under the NOx SIP Call and requests conditional approval of those provisions into the SIP.

Through a notice of proposed rulemaking (NPRM), published on January 11, 2023 (88 FR 1533), EPA proposed to conditionally approve into Tennessee's SIP Tennessee Air Pollution Control Board operating permit No. 077509 for Eastman, state effective on August 11, 2021, to provide alternative NOx monitoring and reporting for Natural Gas-Fired Boilers 25-29 (PES B-253-1) at this facility in accordance with 40 CFR 51.121(i). TDEC requests that this approval be

conditioned on Tennessee’s commitment to modify the provisions at Chapter 1200-03-27.12(11) to specify allowable non-Part 75 permissible alternative monitoring and reporting methodologies for large industrial non-EGUs subject to the NOx SIP Call, such as the alternative monitoring and reporting provisions in permit No. 077509. The details of Tennessee’s submission, as well as the background and EPA’s rationale for conditionally approving the changes, are described in more detail in the January 11, 2023, NPRM. Comments on the January 11, 2023, NPRM were due on or before February 10, 2023.

II. Response to Comments

EPA received three sets of supportive comments on the NPRM and one set of adverse comments, all from members of the general public.¹ EPA summarizes and responds to the set of adverse comments below.

Comment: The commenter claims that the State’s proposal regarding alternative monitoring and reporting requirements is “vague” and “harmful” and would set a “dangerous precedent” by establishing “conditions beneath already lax federal regulations” that would enable states and industry to “seek a carve-out for a particular law instead of complying with rules designed to provoke compliance with good neighbor provisions.” According to the commenter, this approach would allow the establishment of standards “that could not register a problem if it occurred or give the company permission to develop lax, uninformed, and purposefully negligent reporting and monitoring requirements.”

Response: EPA disagrees with the commenter. As discussed in the January 11, 2023, NPRM, EPA revised its NOx SIP Call rules at 40 CFR 51.121 in 2019 to make Part 75 monitoring, recordkeeping, and reporting optional for subject sources, such that a SIP may establish alternative monitoring for NOx SIP Call budget units if the SIP containing the

¹ The comment “in support of the EPA approving [the] TN Air Pollution Control Board, for the Eastman Chemical Company,” is unclear and may be based on a misunderstanding regarding the nature of this rulemaking. To clarify, EPA is not approving the Tennessee Air Pollution Control Board. EPA is conditionally approving a permit issued to Eastman by the Tennessee Air Pollution Control Board into Tennessee’s SIP.

alternative meets the general requirements of 40 CFR 51.121(f)(1) and (i)(1). These general requirements ensure that alternative monitoring is sufficient to determine whether sources are in compliance with the NO_x SIP Call budgets. Tennessee utilized this flexibility in modifying Eastman's air permit to allow for alternative monitoring and in submitting that permit to EPA for incorporation into its SIP. The permit conditions contain clear and specific alternative monitoring provisions that EPA described in detail in the NPRM, and the SIP revision containing those provisions satisfies 40 CFR 51.121. More specifically, the level of detail and monitoring rigor required by 40 CFR part 75, Appendices D and E (as an alternative to the methodologies in 40 CFR 75.12 and 40 CFR 75.17) are adequate to ensure that Eastman is in compliance with its source-specific allocation of Tennessee's NO_x SIP Call budget.² Compliance with the NO_x monitoring provisions within 40 CFR part 75, Appendices D and E is required by Condition 2 of Tennessee Air Pollution Control Board operating permit No. 077509, which is being conditionally approved into Tennessee's SIP.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of this preamble and the January 11, 2023, NPRM, EPA is finalizing the incorporation by reference of Tennessee Air Pollution Control Board operating permit No. 077509 for Eastman, state effective on August 11, 2021, into the Tennessee SIP. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final

² Furthermore, as discussed in Section III of the NPRM, NO_x emissions from Eastman's affected units are substantially below the facility's NO_x budget, and the work practice requirements of 40 CFR part 63, subpart DDDDD (periodic tune-ups) provide additional assurance that the boilers are operating properly.

rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.³

IV. Final Action

EPA is taking final action to conditionally approve Tennessee Air Pollution Control Board operating permit No. 077509 for Eastman, state effective August 11, 2021, for incorporation into the Tennessee SIP. These changes were submitted by Tennessee on August 11, 2021. As discussed in more detail in the January 11, 2023 NPRM, these changes to Tennessee's SIP are approved subject to the condition that Tennessee meets its commitment to submit a SIP revision modifying the provisions of TAPCR 1200-03-27.12(11) to specify permissible non-Part 75 alternative monitoring and reporting methodologies, as allowed under 40 CFR §51.121(i)(1) and (4), by 12 months from the date of this final approval. If the State fails to submit this revision on or before 12 months from the date of final approval of this action, the conditional approval will become a disapproval pursuant to CAA section 110(k)(4).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely conditionally approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

³ *See* 62 FR 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA

will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: February 28, 2023.

Daniel Blackman,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR – Tennessee

2. In § 52.2219, add paragraph (b) to read as follows:

§ 52.2219 Conditional approval.

* * * * *

(b) Tennessee submitted a source-specific SIP revision to EPA on August 11, 2021, regarding the Eastman Chemical Company’s Kingsport, Tennessee facility, along with a commitment to modify the provisions at Tennessee Air Pollution Control Regulation 1200-03-27.12(11) to specify allowable non-Part 75 permissible alternative monitoring and reporting methodologies for large industrial non-EGUs subject to the NO_x SIP Call. EPA conditionally approved the August 11, 2021, SIP revision in an action published in the *Federal Register* on [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]. If Tennessee fails to meet its commitment by [INSERT DATE ONE YEAR AFTER DATE OF PUBLICATION

IN FEDERAL REGISTER], the conditional approval will become a disapproval on [INSERT DATE ONE YEAR AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

3. In § 52.2220, add an entry for “Eastman Chemical Company” at the end of the table in paragraph (d) to read as follows:

§ 52.2220 Identification of plan.

* * * *

(d) * * *

EPA-Approved Tennessee Source-Specific Requirements

Name of Source	Permit No.	State effective date	EPA approval date	Explanation
**	**	*	*	*
Eastman Chemical Company	077509	8/11/2021	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Conditional approval based on TDEC’s commitment to modify the provisions at Chapter 1200-03-27.12(11) to specify allowable non-Part 75 permissible alternative monitoring and reporting methodologies for large industrial non-EGUs subject to the NOx SIP Call.

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[FR Doc. 2023-04504 Filed: 3/7/2023 8:45 am; Publication Date: 3/8/2023]